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Marcia A. Lindsay  
Deputy Director  
S.C. Legislative Audit Counsel  
1331 Elmwood Avenue, Ste. 315  
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RE: LAC Report regarding SCDC Audit

Dear Ms. Lindsay:

Even prior to the deadliest U.S. prison riot in 25 years at Lee Correctional Institution in April 2018, prison experts have been sounding the alarm about the dire need for additional correctional officers and staff within South Carolina prisons. SCDC Director Bryan Stirling concurs with the need to increase hiring, but has been unable to accomplish that goal through incremental salary raises alone.

Research leaves no doubt that adequate staffing is essential to the safe, effective management of prisons. This is true both with regard to inmate conduct inside prisons, as well as preparing inmates for life outside prison walls to reduce recidivism.

South Carolina's chronic prison staff shortage impacts every aspect of prison life, from the inability to provide adequate security, to the dearth of educational, vocational and re-entry programs, and insufficient delivery of medical, mental health, and addiction recovery services that, in turn, affect the stability and security of inmates and staff alike.

Security inside state prisons is also negatively impacted by onerous visitation regulations and a lack of access to wage-earning work for most inmates, which demoralize inmates and contribute to making their behavior more difficult to manage. On top of these impediments, the South Carolina Parole Board routinely denies parole for the vast majority of inmates with violent convictions. This severely diminishes the hope, and thus motivation, of inmates who see no clear path to be granted release without meaningful opportunities to improve their education and skill sets.

## **I. Historical Background: How Did We Get Here?**

In response to a burgeoning crime wave in the mid-1990's, South Carolina mirrored national trends, abolishing parole and adopting "truth-in-sentencing" measures for designated felonies. These sentencing reforms meant that a violent offender had to serve a minimum of 85 percent of his or her sentence before being released. This change, in addition to tough new "mandatory minimum" sentencing guidelines, filled state prisons beyond capacity, and led to many other unintended, and undesirable, consequences that plague South Carolina to the present.

During the next 10 years, a series of SCDC directors systematically dismantled the Department's human services and rehabilitation programs, eliminating many educational and vocational programs, reducing food quality, limiting visitation rights, and increasing confinement in cells. In addition, SCDC ended its system of providing small payments to every inmate to cover necessities such as hygiene items. All of these factors, combined with the overcrowding, created a sense of hopelessness among many inmates, which had the effect of destabilizing prison security.

In 2010, state legislators enacted sentencing reform measures that reduced the prison population by 14 percent, primarily by releasing low-level, non-violent offenders.<sup>1</sup> SCDC then closed several prisons to reduce expenditures, housing the remaining offenders, a greater percent of whom were serving sentences for violent crimes, in a smaller number of institutions. Meanwhile, correctional officer staffing levels fell by over 30 percent.<sup>2</sup>

## **II. Staffing Effects on Security**

Lack of adequate staffing has had deadly consequences, as evidenced by the Lee riot in April 2018. Seven inmates were brutally killed and another seventeen hospitalized by roving inmates wielding homemade knives, as correctional officers struggled for seven hours to bring the institution under control. During much of that time, injured inmates were left alone to suffer and die, pleading for medical assistance and protection from guards who were waiting for back-up to safely enter the scene.

Director Stirling has asserted that the Lee riot, and the overall increase in violence within the state's prisons, is primarily attributable to the high number of contraband cell phones being used inside prison walls. *Post and Courier* contributing reporter Steve Bailey has been tracking and documenting the drastic uptick in violence inside South Carolina prisons for years, and disagrees with Stirling's assessment of the root cause: "There are cell phones in every prison in America," Bailey told Crimesider. "There's something else

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<sup>1</sup> Bailey, Steve. "Despite critical reforms, S.C. prisons remain dangerous," *The Post and Courier* (Charleston), 2 Dec 2017, Google, 18 October 2018.  
[https://www.postandcourier.com/opinion/commentary/despite-critical-reforms-s-c-prisons-remain-dangerous/article\\_01e711c6-d6d9-11e7-820f-9ffe192d5d09.html](https://www.postandcourier.com/opinion/commentary/despite-critical-reforms-s-c-prisons-remain-dangerous/article_01e711c6-d6d9-11e7-820f-9ffe192d5d09.html).

<sup>2</sup> South Carolina Department of Corrections. "Filled Correctional Officer Positions in SCDC Institutions-Jan. 2011-Nov. 2017." 2018.

going on here too.”<sup>3</sup> That something else, Bailey asserts, is a desperate shortage of correctional officers.<sup>4</sup>

The implementation of sentencing reforms in 2010 reduced the statewide prison population by more than 3,000 inmates through 2017, as part of a nationwide trend towards redirecting non-violent offenders to diversionary programs such as addiction treatment and mental health resources.<sup>5</sup> In spite of this reduction, SCDC has been unable to maintain the appropriate staffing levels required to safely house the remaining inmates.

The staff-to-inmate ratio in South Carolina far exceeds the national recommended standard of 30-to-1.<sup>6</sup> According to one South Carolina inmate: “South Carolina is very, very short on staff. We have, like, two hundred and fifty-two in a building, in one dorm. It’s probably one correctional officer that has to run both wings.”<sup>7</sup> It is our understanding that no Level 3 prison and few, if any, Level 2 facilities meet the national standard.

#### **A. How Bad is the Staffing Shortage?**

The best source for gaining an accurate, reliable answer to this question is Tom Roth. Mr. Roth was retained by the Department in 2017 to conduct a comprehensive study of the SCDC security staffing needs. We have not been able to obtain a copy of the Roth report, but understand Mr. Roth found that the number of correctional officer staff positions the legislature has approved is far less than the number actual needed to meet applicable national standards and to provide a safe correctional setting for staff and inmates alike. Of particularly important consideration is the correctional officer job vacancy rates at Level 3 institutions. Those prisons, such as Lee, house the most dangerous inmates and need the lowest staff-to-inmate ratios. A March 2018 report showed fewer than two out of every three approved correctional officer positions (610 of 965) were filled. The Department tracks on a monthly basis the number of correctional officer positions approved and filled for each institution, including inmate to staff ratios. These reports should be available to the LAC.

#### **B. Classification and Risk Assessment Tools**

Every day, SCDC classification officials make crucial determinations about how to classify inmates based on the degree of risk they pose to other inmates and staff, and the needs they possess for treatment and programs. Most prisons across the nation have

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<sup>3</sup> See Bailey, *supra* note 1.

<sup>4</sup> McKenzie, Victoria. “Are Cell Phones Really to Blame for Spike in S.C. Prison Violence?” CBS News, 19 April 2018, Google, 18 October 2018. <https://www.cbsnews.com/news/south-carolina-prison-riot-are-cellphones-really-to-blame-for-spike-in-s-c-prison-violence/>.

<sup>5</sup> See Bailey, *supra* note 1.

<sup>6</sup> SCDC website, “Correctional Officer Vacancy and Salary Information.” Google as of 19 Oct. 2018 [http://www.doc.sc.gov/research/SystemOverview/correctional\\_officer\\_vacancy\\_and\\_salary\\_information\\_1\\_00118.pdf](http://www.doc.sc.gov/research/SystemOverview/correctional_officer_vacancy_and_salary_information_1_00118.pdf).

<sup>7</sup> Gross, Daniel A. “An Inside Account of the National Prisoners’ Strike,” Sept 6, 2018, *New Yorker* magazine, 18 October 2018. <https://www.newyorker.com/news/as-told-to/an-inside-account-of-the-national-prisoners-strike>.

needs they possess for treatment and programs. Most prisons across the nation have long ago adopted the usage of evidence-based risk/needs assessment tools to help guide these important decisions. To our knowledge, SCDC has yet to adopt a comprehensive risk/needs assessment tool for use in the classification phase through re-entry, a failure criminal justice experts assert exacerbates security problems and increases the likelihood of inmates reoffending.

These assessment tools evaluate dynamic and static personality traits associated with criminal conduct, such as antisocial personality patterns and attitudes, and substance abuse.<sup>8</sup> Risk classification tools help prison officials maximize use of limited resources by pairing offenders with programs based on their risk levels, and concentrating services on those most likely to derive the greatest benefit from programs.<sup>9</sup> While these tools are not a panacea, they are considered a cornerstone of good correctional practice. "Research consistently has shown that assessing each individual's risk of reoffending, matching supervision and treatment to an offender's risk level and targeting his or her unique criminal risk factors and needs with program programs significantly improves offender outcomes, reduces recidivism and enhances public safety."<sup>10</sup>

In 2010, South Carolina's legislature passed legislation requiring probation agents to conduct actuarial assessments of offenders' risks and needs, and make decisions about the type of supervision and services consistent with evidence-based practices.<sup>11</sup> Although the S.C. Department of Probation, Pardon and Parole applies the risk assessment tool to offenders released to its supervision, SCDC does not employ a corresponding analytical tool to improve security inside state prisons and target the state's limited correctional resources on the highest risk prison population. The Department has utterly failed to develop this comprehensive approach to manage inmate conduct, improve prison security, and enhance public safety.

### **C. Proliferation of Gangs**

Prison gangs have proliferated within South Carolina prisons, just as they have throughout the nation in recent decades. This phenomenon of gangs spreading into prisons corresponded with the meteoric rise in prison populations in the 1980's.<sup>12</sup> Gang rule provided the order and safety that prison management could no longer provide.<sup>13</sup> Countering the power of gangs today, some experts contend, would require states to send fewer people to prison, so security is more manageable.<sup>14</sup> In addition, state legislatures

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<sup>8</sup> *Risk/Needs Assessment 101: Science Reveals New Tools to Manage Offenders*, The PEW Center on the States, September 2011, page 3.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> Skarbek, David, "California's prison gang problem: the role of prison size," *Prison Reform International* King's College London, 24 November 2016. Google, 17 October 2018.

<https://www.penalreform.org/blog/californias-prison-gang-problem-role-prison-size/>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*



need to open up the prison economy, making telephone calls and amenities available at reasonable prices, thereby diminishing a prison black market and the grip of gangs on underground sales of cell phones and other contraband items.<sup>15</sup>

Research shows gang members commit both violent and nonviolent offenses in prison at higher rates than inmates not affiliated with gangs.<sup>16</sup> The bare bones staff working in South Carolina prisons struggle with managing the behavior of gangs inside the walls, while at the same time protecting the safety of non-gang affiliates.

Prison experts have posited that many South Carolina prisons today are run by gangs, not correctional officers.<sup>17</sup> The chaos inside prisons, such as Evans, a Level 2 prison in rural Bennettsville, S.C. was vividly described by a mother of an inmate who shared her story with *The Post and Courier*. Visitation was often canceled when Evans was put on lockdown mode due to violence.<sup>18</sup> The mother provided details of gangs terrorizing and intimidating vulnerable, weaker inmates such as her son into having his parents pay extortion money to avoid his being beaten or violently killed.<sup>19</sup> This mother reported the extortion to prison authorities, begging them repeatedly for her son to be transferred to another institution to no avail.<sup>20</sup> Before making one of the payments, she asked one correctional officer what he would do if his child had been in prison. His response: "My son wouldn't be in prison."<sup>21</sup>

Typically, SCDC tries to maintain security by moving known gang members to Restrictive Housing Units (RHU), isolating them from the general population and punishing them by eliminating visitation and other benefits. Nationwide, wardens have long embraced this approach of isolating and punishing gang-related misconduct. Various statewide studies bolster this approach, with Texas reporting a reduction in homicides and assaults and Arizona highlighting an overall 30 percent decrease in prison misconduct when they isolated gang members in RHUs.<sup>22</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> Pyröoz, David C. "Using Restrictive Housing to Manage Gangs in U.S. Prisons," Department of Justice, Office of Justice Programs, National Institute of Justice. 1 July 2018. <https://nij.gov/topics/corrections/institutional/Pages/using-restrictive-housing-to-manage-gangs-in-us-prisons.aspx>.

<sup>17</sup> Smith, Tim, et al. "Death, violence in SC prisons: How Lee Correctional Institution puts gangs before safety." *Greenville News* 21 April 2018. (Citing Brookings Institute Report: "Inside Out-The Challenge of Prison-based criminal organizations."). Google as of 16 Oct. 2018 <https://www.greenvilleonline.com/story/news/local/south-carolina/2018/04/21/why-deaths-and-violence-continue-lee-correctional/532430002/>.

<sup>18</sup> Alani, Hannah. "A mother paid South Carolina prison gangs thousands to keep her son alive," *The Post and Courier* (Charleston), 19 April 2018. [https://www.postandcourier.com/news/a-mother-paid-south-carolina-prison-gangs-thousands-to-keep/article\\_b5a55e52-427c-11e8-9774-4fa603e7e5e2.html](https://www.postandcourier.com/news/a-mother-paid-south-carolina-prison-gangs-thousands-to-keep/article_b5a55e52-427c-11e8-9774-4fa603e7e5e2.html).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

But a strong argument for alternatives to "suppression" strategies has recently been gaining favor, as these policies may actually enhance institutional safety at the cost of long-term public safety.<sup>23</sup> The risk of relying on these isolation tactics is that these prisoners not only suffer the loss of social and interpersonal skills while in isolation, these policies also likely enhance criminality when inmates' only access to one another is restricted to individuals identified as similarly violent, and gang-affiliated.<sup>24</sup>

After the deadly Lee prison riot, SCDC officials tried a different approach to isolate negative behavior. They shipped 48 individuals, identified by the Department as the most violent and 'problematic' gang-affiliated inmates, to an out-of-state private prison in Tutwiler, Mississippi.<sup>25</sup> Director of California's Prison Law Office, Donald Specter, argues isolating problematic inmates in RHU's or sending them to out-of-state prisons has not been effective.<sup>26</sup> He and other academics recommend a different approach: closely monitoring integration coupled with incentives and tools to help prisoners leave gang life.<sup>27</sup> Three such programs, in Connecticut, Missouri and California, have dramatically reduced gang affiliation and recidivism by placing inmates in environments where violence was not the norm, and providing them the tools to transition to a more normal life upon re-entry into society.<sup>28</sup>

Chronic understaffing has also lead SCDC to over-rely on lockdowns as a means to control the inmate population. As of September 20, 2018, 25 and one-half of 37 prison units in South Carolina were still on lock-down status, which began in April after the Lee prison riot. That means thousands of inmates have been confined to their cells for up to 23 hours a day, typically getting just one shower per week, for at least some six months. According to a U.S. Department of Justice report, keeping inmates confined to their cell for 23 hours a day is akin to solitary confinement, a process the DOJ guidelines say should be used "rarely, applied fairly, and subjected to reasonable restraints."<sup>29</sup> The report added that extended periods of lock-downs, such as the ones in SC since Lee, can cause serious, long-term harm to inmates, and should never be the default practice.<sup>30</sup>

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<sup>23</sup> Specter, Donald. "Making Prisons Safe: Strategies for Reducing Violence", *Washington University Journal of Law & Policy*, Vol. 22:125 Access to Justice The Social Responsibility of Lawyers / Prison Reform: Commission on Safety and Abuse in America's Prisons. January 2006. 17 Oct. 2018. [https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1348&context=law\\_journal\\_law\\_policy](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1348&context=law_journal_law_policy).

<sup>24</sup> *Id.*

<sup>25</sup> Knapp, Andrew. "After South Carolina riot, 'problematic' inmates shipped to private Mississippi prison," *Post and Courier* newspaper (Charleston SC), 22 June 2018. Google 17 Oct. 2018 [https://www.postandcourier.com/news/after-south-carolina-riot-problematic-inmates-shipped-to-private-mississippi/article\\_c22c925c-7626-11e8-9fcf-c75dcca4f8ec.html](https://www.postandcourier.com/news/after-south-carolina-riot-problematic-inmates-shipped-to-private-mississippi/article_c22c925c-7626-11e8-9fcf-c75dcca4f8ec.html).

<sup>26</sup> See Specter, *supra* note 22.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Bohatch, Emily. "Prisoners across SC still in lockdown 5 months after deadly riot. Here's why," *The State* (Columbia, SC). 20 Sept. 2018. Google 17 Oct. 2018. <https://www.greenvilleonline.com/story/news/local/2018/09/20/prisoners-across-sc-still-lockdown-5-months-after-deadly-riot/1356991002/>.

<sup>30</sup> *Id.*

#### **D. Increase in Violence**

A lack of staff also reduces the safety levels within prisons. Bailey's research discovered a frighteningly steady rise in violent deaths among inmates in the state in recent years. In 2017 there were 18 deaths -12 murders and six suicides; in 2016 there were five murders and six suicides; back in 2009 the total number of deaths was just two.<sup>31</sup> There has been a similarly steep rise in the past couple of years in serious assaults, with 250 inmates requiring hospital treatment in 2016 and 2017 alone.<sup>32</sup> Bailey had a difficult time obtaining this data from SCDC, as the Department does not publish data on assaults and deaths unless they are against correctional officers.<sup>33</sup>

University of South Carolina Assistant Professor of Criminology and Criminal Justice Hayden Smith has warned SCDC of the dangers of relying on extended lockdowns to control its inmate population. Smith expressed concern that inmates kept under lockdown since April creates a potential powder keg situation with corrections staff once the lockdown is lifted.<sup>34</sup> Correctional officers have already been subjected to a spike in assaults from 2015 to 2017 and the pent up frustration from prolonged confinement could pose real threats to SCDC staff when the period of lockdown is ended.<sup>35</sup>

Inmates have reacted to the increased violence and lack of security by taking legal action against SCDC. McCormick Correctional Institution was described by inmates housed there, and the lawyers filing lawsuits against SCDC on their behalf, as "a hyper-violent facility where gang members roam free and attacks happen in the all-too-often absence of corrections officers."<sup>36</sup> The lawsuits filed on behalf of 13 inmates, came after the maximum security prison saw two fatal stabbings and an escape in 2016. State leaders blame the violence on a high rate of staff vacancies within the prison system, and low staff compensation rates.<sup>37</sup>

#### **E. High Rate of Staff Turnover, and Inability to Fill Positions**

The first issue with inadequate staffing is high turnover. According to Dr. Smith, South Carolina's rate of correctional officer turnover has historically been more than

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<sup>31</sup> Pilkington, Ed. "Seven inmates brutally killed with knives in South Carolina prison unrest," *The Guardian* (London), 16 April 2018. Google 17 Oct. 2018. <https://www.theguardian.com/us-news/2018/apr/16/7-inmates-dead-17-injured-south-carolina-prison-fight>.

<sup>32</sup> *Id.*

<sup>33</sup> See McKenzie, *supra* note 4.

<sup>34</sup> Smith, Professor Hayden, 3 August 2018, Personal Interview.

<sup>35</sup> SCDC graph of assaults on staff.

<sup>36</sup> Hensley, Matthew. "A 'history of violence': Lawsuits link McCormick prison attacks to absent officers," *Index Journal*, 30 April 2018. Google 17 October 2018. [http://www.indexjournal.com/news/a-history-of-violence-lawsuits-link-mccormick-prison-attacks-to/article\\_d8a625f5-5928-5eda-9dab-5225b6066c57.html](http://www.indexjournal.com/news/a-history-of-violence-lawsuits-link-mccormick-prison-attacks-to/article_d8a625f5-5928-5eda-9dab-5225b6066c57.html).

<sup>37</sup> *Id.*



double the national average, at 34 percent.<sup>38</sup> More than half of the correctional officers polled in a 2009 study conducted by Dr. Smith indicated they frequently thought about leaving their job, primarily due to low pay and benefits, lack of decision making autonomy, dangerous work environments and the lack of career mobility.<sup>39</sup>

The issue of high turnover is compounded by the Department's persistent inability to fill the more than one in three jobs that remain vacant. The legislature approved modest pay increases to fill the more than 600 vacant prison staff positions in 2018, yet a large portion of these jobs remain unfilled.<sup>40</sup> According to Director Stirling, legislators have provided funding for just 285 of the 612 front line officers needed inside SCDC prisons, and SCDC employees have been leaving in droves over the past decade.<sup>41</sup> As a result, SCDC is perpetually requiring staff to work overtime under stressful conditions. To be able to incentivize correctional staff to work in one of the State's most stressful, dangerous jobs, SCDC must offer wages that are not just comparable to compensation at local detention centers, but exceed the competition.

### **III. Staffing Effects on Services (Mental Health, Medical, and Addiction)**

Lack of sufficient security staffing also greatly impacts South Carolina's ability to provide necessary medical, mental health and addiction-related services. Without proper staffing, such essential services cannot be treated in a manner that meets constitutional standards. Moreover, the failure to meet such standards destabilizes the institutional security.

Since the large-scale de-institutionalization of the mentally ill across America starting in the 1980's, prisons have largely become the societal repository for those struggling with mental illness. Around the same time, strict drug laws began to be implemented, punishing addicts with prison time rather than treatment.

South Carolina has been unable to adequately treat the large influx of psychiatric and addicted patients that have flooded its prisons without adequately trained and plentiful staff. In spite of a successful lawsuit brought against SCDC for the mistreatment and neglect of mentally ill inmates in 2014, "mental health care remains woefully inadequate," according to Bailey.<sup>42</sup> As a result, corrections officers rely too heavily on frequent lock-downs and solitary confinement, further exacerbating these issues.

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<sup>38</sup> Smith, Hayden Dr. et al. "An Assessment of Job Satisfaction among South Carolina Correctional Officers." 16 Sept. 2013. Report Prepared for SCDC.

<sup>39</sup> *Id*

<sup>40</sup> See cite 6.

<sup>41</sup> Thomas, Loren. "Department of Corrections Down More than 600 Correctional Officers," *Channel 19 WLTX*, 10 May 2018. Google 17 Oct. 2018 <https://www.wltx.com/article/news/local/departments-of-corrections-down-more-than-600-correctional-officers/101-551019743>.

<sup>42</sup> Bailey, Steve. "Prison deaths are piling up in SC—does anybody care?" *The Post and Courier* (Charleston), 24 March 2018. Google 17 Oct. 2018 [https://www.postandcourier.com/opinion/commentary/prison-deaths-are-piling-up-in-s-c-/article\\_a0ce5f84-2ec6-11e8-9c80-7fc74fb2aa40.html](https://www.postandcourier.com/opinion/commentary/prison-deaths-are-piling-up-in-s-c-/article_a0ce5f84-2ec6-11e8-9c80-7fc74fb2aa40.html).



In its most recent report dated July 2018, the panel of experts monitoring compliance with the SCDC mental health litigation settlement agreement found, as they have in virtually every report they have prepared since beginning to monitor compliance in May 2016, that the chronic shortage of staffing undermines the Department's ability to achieve compliance with the constitutional standards reflected in the Settlement Agreement. Excerpts from the report include the following:

- "The entire SCDC system continues to be understaffed by security and mental health, medical and nursing staff." July 2018 Report, p. 1.
- "The IP (Implementation Panel) has consistently reported our grave concerns regarding the inadequate staffing at SCDC. This is a long-standing problem, and as with many systems, it has adversely impacted mental health care and resulted in lockdowns/segregation and uses of force, include chemical and physical restraints." *Id.* at 2.
- "Despite efforts to recruit and retain security staff (acknowledging salary increases and intense recruitment activities), the security staffing remains inadequate to support the basic policy and procedural requirements." *Id.*
- "The SCDC increased dollars for security staffing has not been successful in reducing correctional officer vacancies." *Id.*
- "On duty correctional staff for day and night shifts are routinely less than 50 percent of the authorized staffing. Shortages are at critical lends for a number of institutions." *Id.* at 3.
- "SCDC is highly unlikely, if not completely unable, to achieve substantial compliance with the Settlement Agreement and the provision of constitutionally adequate and required mental health care without major and consistent increases in staffing and resources and/or major reduction in the number of inmates housed in SCDC facilities." *Id.*
- "Even prior to the agency-system wide lockdown, most Level 2 and 3 institutions are locked down from 7p to 7a daily." *Id.*
- "Correctional officer staff vacancies prevent SCDC from providing even the basic services in the Restrictive Housing Units and General Population." *Id.*

State Sen. Karl Allen has received numerous letters from inmates describing the abysmal medical care inside South Carolina prisons: "Specifically it goes into medical treatment or lack thereof of medical attention for the inmates when they have a health occurrence," said Sen. Allen.<sup>43</sup> Lawsuits are another way the public learns of the lack of adequate medical care. Inmates at McCormick filed suit alleging that after officers quelled an uprising involving other inmates, they locked down an entire unit without food or medicine for 2.5 days, nearly causing one inmate to slip into a diabetic coma.<sup>44</sup>

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<sup>43</sup> See Citation 20.

<sup>44</sup> See Citation 15.

#### **IV. Staffing Effects on Programs**

Copious research indicates the strong relationship between quality prison programming, and significant reductions in disciplinary infractions and recidivism. In the wake of the huge influx of inmates in the 1990's, SCDC eliminated most of its valuable programs. This left inmates in overcrowded, understaffed institutions with little hope of preparing for re-entry by improving their educational level and skills.

Today, SCDC program management recognizes the need to augment educational, vocational and soft-skills programs, but lacks the resources and workforce to achieve that goal.

##### **A. Educational Programs Reduce Prison Violence and Recidivism**

The impact of correctional education has been studied extensively over the past several decades. The most prominent meta-analysis was conducted by Rand Corporation, showing that inmates who participate in any kind of educational program behind bars—from remedial math to vocational auto shop to college-level courses—are up to 43 percent less likely to reoffend and return to prison.<sup>45</sup> They also appear to be far more likely to find a job after their release, and the social stability that comes with it. Every dollar invested in correctional education, RAND concluded, saves nearly five in re-incarceration costs over three years.<sup>46</sup>

Educational prison programs also reduce prison misconduct.<sup>47</sup> According to Paul Wright, director of the prisoner rights advocacy group Human Rights Defense Center, there is a simple and accurate explanation for the increase in violence in SC prisons in recent years: the lack of funding for “incentive programs” – vocational, academic and work programs for prisoners.<sup>48</sup> “When you take away all hope and you take away any reason for [inmates] to behave themselves, then that's when you start having higher levels of violence, assaults, and attacks.”<sup>49</sup> That's exactly what is occurring at SCDC.

By reducing recidivism, prison education has the far-reaching potential of reducing the entire scale of the prison population, and thus, prison costs.<sup>50</sup> South Carolina scores near the bottom of all state rankings in the US News and World Reports Pre-

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<sup>45</sup> Davis, Lois M., et al. “Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults.” *RAND Corporation*, Santa Monica, CA. 2013. [https://www.rand.org/pubs/research\\_reports/RR266.html](https://www.rand.org/pubs/research_reports/RR266.html). Also available in print form.

<sup>46</sup> *Id.*

<sup>47</sup> Earl, Rochelle, “The Relationship Between Inmate Education and Disciplinary Infractions in Prison” (2017). *Culminating Projects in Criminal Justice*. 8. [http://repository.stcloudstate.edu/cis\\_etds/8](http://repository.stcloudstate.edu/cis_etds/8).

<sup>48</sup> See MacKenzie, *supra* note 4.

<sup>49</sup> *Id.*

<sup>50</sup> Prison Studies Project, “Why Prison Education?” Google 15 Oct. 2018 <http://prisonstudiesproject.org/why-prison-education-programs/>.

Kindergarten-12th grade educational rankings for 2018.<sup>51</sup> Research on the state prison population shows that inmates, on average, have a far lower educational level than the rest of South Carolina's population, with more than half lacking a high school diploma or GED.<sup>52</sup>

Given the overwhelming research demonstrating the many benefits of prison educational programs, South Carolina should be given a failing grade on addressing inmate educational gaps. After a high point in 2011 when SCDC awarded 1,209 GED's, that rate has fallen precipitously, with a mere 256 GED's awarded in 2017.<sup>53</sup> Former Palmetto Unified School District Superintendent Randy Reagan admitted difficulty in hiring a sufficient number of qualified teachers inside state prisons. "We lost 130 out of 170 full time teachers during a RIF (reduction in force) in 2003, and haven't recovered since then," said former PUSD Superintendent Reagan.<sup>54</sup>

A snapshot of SCDC's performance at one of its institutions, Lieber, brings home just how few opportunities inmates have to gain a GED. Of the approximately 1,200 inmates at Lieber on a given day, more than 600 lack a high school diploma or GED.<sup>55</sup> The two full time teachers based at Lieber have the capacity to teach 60 students a day (30 in the morning, 30 in the afternoon for three hour periods).<sup>56</sup> That translates into a 10% educational service rate, which produced a total of three GEDs at Lieber from 2015 through 2017.<sup>57</sup>

As limited as they are, SCDC GED programs cannot accommodate the large number of inmates testing at elementary school levels of literacy and math. In fact these educational gaps are not addressed at all by SCDC. To the extent inmates with such limited educational achievement receive any academic instruction, it is through remedial programs sponsored by prison volunteers. Because, however, of the Department's limited success in recruiting and supporting volunteer programs, remedial educational programs have only been successfully operated at one prison, Allendale Correctional Institution. At Allendale, inmates with high school degrees have been taught by retired professional educator volunteers to provide remedial classes to lower-performing inmates. The GED rate at ACI is one of the highest in the State.

Studies conducted over the past two decades consistently indicate that higher education in prison programs also reduces recidivism and translates into reductions in

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<sup>51</sup> US News and World Report online, "Education Rankings-Measuring How Well States are Educating their Students," Google 15 Oct. 2018 <https://www.usnews.com/news/best-states/rankings/education>.

<sup>52</sup> SCDC website-"Palmetto Unified School District 1." Google as of 17 Oct. 2018 <http://www.doc.sc.gov/edu/pusd.html>.

<sup>53</sup> Reagan, Superintendent Randy. "School Improvement Council/PUSD PowerPoint presentation," April 2018.

<sup>54</sup> Reagan, Superintendent Randy, 29 May 2018, Personal Interview.

<sup>55</sup> *Id.* (Lieber snapshot from PUSD and Superintendent Randy Reagan- "PUSD Educational Resource Allocation Agreement Memorandum of Understanding for Lieber CI").

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*



crime, savings to taxpayers, and long-term contributions to the safety and well-being of the communities to which formerly incarcerated people return.<sup>58</sup> The higher the degree earned, the lower the recidivism rate.<sup>59</sup> Even so, South Carolina there is no publicly available information indicating inmates are given no access to college programs while incarcerated.

## **B. Vocational Programs Reduce Recidivism and Build Skills**

SCDC is insufficiently staffed to build up the vocational skill sets of inmates during incarceration so they will be better prepared to obtain gainful employment upon release. A comprehensive meta-analysis from New York University School of Law concluded that vocational programs can drop recidivism by 20 percent, raise earnings post-release, and diminish future criminality.<sup>60</sup> Another study by Florida Department of Corrections indicated that inmates who earned a vocational certificate were 14.6 percent less likely to recidivate.<sup>61</sup>

Vocational programs within SCDC are spotty. Some institutions offer carpentry or welding, while others have no such programs. The inmates that are lucky enough to earn a slot in a vocational program are very limited in number, even as the interest in and demand for these programs remains very high. After a high point in 2013, when SCDC issued 3,361 vocational certifications, that rate has fallen to 1,521 in 2018.<sup>62</sup>

## **V. Miscellaneous Ways to Improve Security**

### **A. Prison Wages**

Until the 1990's, South Carolina provided a minimum stipend to every inmate to cover the costs of hygiene products and necessities. As the prisons began to overflow, that policy was eliminated. As a result, some inmates receiving funds from family or friends become vulnerable targets for physical attack and blackmail by those who have nothing. A lack of staffing exacerbates this issue, as inmates are forced to fend for themselves.

The vast majority of inmates in South Carolina prisons are unpaid for the work they perform, which typically entails tasks that support the day-to-day operation of correctional institutions such as food service or cleaning duties. Legally, inmates across the country

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<sup>58</sup> Prison Studies Project. "Why Prison Education?" Google as of 15 Oct. 2018 <http://prisonstudiesproject.org/why-prison-education-programs/>.

<sup>59</sup> *Id.*

<sup>60</sup> Galvin, Emily. "Let Them Work-Prisoners need jobs while still in prison to break America's epidemic of recidivism." *Slate.com*, April 21, 2016. Google as of 13 Oct. 2018 <https://slate.com/news-and-politics/2016/04/a-great-way-to-end-recidivism-give-prisoners-jobs.html>.

<sup>61</sup> *Id.*

<sup>62</sup> See Reagan, *supra* note 55.

can be forced to work under threat of punishment, without compensation, under the 13th Amendment.

While it may be legal to mandate unpaid inmate labor, research indicates it is not wise. Several prominent studies yielding evidence supporting the notion that prison-based employment programs save a substantial amount of money in incarceration costs, and help reduce costs to the state.<sup>63</sup> One study demonstrated that increasing a released prisoner's access to cash reduced the first-day recidivism to zero, with no increase in crime later.<sup>64</sup> While it may seem like not compensating, or underpaying inmates for their work saves money, research indicates the American economy suffers from preventing inmates from being compensated.<sup>65</sup>

As of 2015, only a small proportion of inmates, 1,305 out of 21,251, were paid for their work through one of the state's three prison employment programs.<sup>66</sup> Pay ranges on the low end between \$.35 and \$1.80 per hour, to payment of prevailing industry wages for the very coveted slots in Prison Industry Employment (PIE program).<sup>67</sup> Support for raising prisoners' wages has been voiced by the American Corrections Association and many others as a means of improving prison security, raising morale, and establishing self-sufficiency.<sup>68</sup>

## **B. Prison Industries**

The inmates able to earn wages while incarcerated do so through one of three SCDC prison employment programs. The SCDC Service Program involves inmates rebuilding and reupholstering furniture for both public and private sector customers, participating in various textile recycling projects and more. Inmate wages can be negotiated with private sector companies, and inmates earn from \$.35 to \$1.80 per hour.<sup>69</sup>

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<sup>63</sup> Smith, Paula et al. "Employment and Vocation Programs in Prison" *Oxford Handbook of Prisons and Imprisonment*, April 2017, page 27, citing Aos et al. 2006; Drake et al. 2009. Google as of 13 Oct. 2018. <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199948154.001.0001/oxfordhb-9780199948154-e-21>.

<sup>64</sup> Bozelko, Chandra "Give Working Prisoners Dignity-and Decent Wages." *National Review*, 11 January 2017. Google as of 12 Oct. 2018 <https://www.nationalreview.com/2017/01/prison-labor-laws-wages/>.

<sup>65</sup> Kovensky, Josh. "It's Time to Pay Prisoners the Minimum Wage." *New Republic* August 15, 2014. Google as of 14 Oct. 2018 <https://newrepublic.com/article/119083/prison-labor-equal-rights-wages-incarcerated-help-economy>.

<sup>66</sup> Smith, Tim. "Why South Carolina's prison-labor programs are a controversial issue." *The Herald Newspaper*, 22 September 2015. Google as of 10 Oct. 2018 <https://www.heraldonline.com/news/local/article36116808.html>.

<sup>67</sup> SCDC Website-Division of Industries Google as of 18 Oct. 2018. <http://www.doc.sc.gov/programs/pi.html#traditional>

<sup>68</sup> <sup>68</sup> Fathi, David C. "It's time to give prisoners a big raise," *The Washington Post*, 3 Sept. 2018. Google as of Oct. 12 2018 [https://www.washingtonpost.com/opinions/its-time-to-give-prisoners-a-big-raise/2018/09/03/6be40364-ad5b-11e8-8a0c-70b618c98d3c\\_story.html?utm\\_term=.0818447b7ade](https://www.washingtonpost.com/opinions/its-time-to-give-prisoners-a-big-raise/2018/09/03/6be40364-ad5b-11e8-8a0c-70b618c98d3c_story.html?utm_term=.0818447b7ade).

<sup>69</sup> See SCDC, *supra* note 68.

In the Traditional Program, inmates make office furniture, mattresses, apparel and other items, and are generally paid between \$6.75 and \$8.75 an hour<sup>70</sup>.

The gold standard for inmates is to be selected to work in South Carolina's Prison Industry Enhancement (PIE) program, run through the U.S. Department of Justice, Bureau of Justice Assistance (BJA). This program places inmates in realistic work environments, pays them prevailing wages and gives them a chance to develop marketable skills that increase their potential for rehabilitation and meaningful employment on release.<sup>71</sup> Up to 80 percent of the wages earned by PIE program employees can be garnished to pay victim restitution fees and child support payments, or set aside in mandatory savings accounts, meaning the program not only helps inmates prepare for a future outside prison, but also benefits victims and children of the incarcerated.<sup>72</sup>

Richard Subia, former director of the Division of Adult Operations at the California Department of Corrections, underscored the twofold rehabilitative benefits of such programs: creating a financial sense of identity, but also changing how the inmate sees himself.<sup>73</sup> Five leading economists conducted extensive research on whether or not inmates should be integrated into the nation's work force, and their results were unanimous: "Virtually every stakeholder in the U.S. economy would be better off if people who were incarcerated were fully integrated into the U.S. labor force, and were responsible in meeting their obligations to their communities, families and victims."<sup>74</sup>

South Carolina's PIE program was recognized as the largest, and most successful such program in the nation from 1996-2005, under the leadership of PIE Director Tony Ellis.<sup>75</sup> Tyger River, a medium-security correctional institution, housed an operation of Anderson Hardwood Floors, based in nearby Clinton, SC. Anderson's operation was the largest of seven factories run within South Carolina's prisons by corporations, employing 250 inmates and paying them \$7-\$10 an hour.<sup>76</sup> The philosophy of PIE is to put inmates in a real-world employment environment, teaching them job skills at the same time as responsibility. "You want to incarcerate them and let them pay whatever penalty is

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> See Bozelko, *Supra* note 65.

<sup>73</sup> See Galvin, *supra* note 61.

<sup>74</sup> See Kovensky, *supra* note 66.

Ragghianti, Maggie Fajardo. "Prison Industries in South Carolina: 1996-2005 Why and How the PIE Model Prospered." Ph.D. 2008. Directed by Charles F. Wellford, Department of Criminology and Criminal Justice. Google as of 10 Oct. 2018 <https://drum.lib.umd.edu/bitstream/handle/1903/8178/umi-umd-5360.pdf;jsessionid=659BB2A8644679810ACA98A6F04CE9BE?sequence=1>.

<sup>76</sup> Woodworking Network, "Anderson Hardwood Floors-Inmates Build New Lives From the Floor Up," April 14, 2011. Google as of 13 Oct. 2018 [https://www.woodworkingnetwork.com/articles/anderson\\_hardwood\\_floors\\_-\\_inmates\\_build\\_new\\_lives\\_from\\_the\\_floor\\_up\\_127690638.html](https://www.woodworkingnetwork.com/articles/anderson_hardwood_floors_-_inmates_build_new_lives_from_the_floor_up_127690638.html).



imposed on them by society, but you want to hopefully change the behavior that got them there in the first place," Ellis says.<sup>77</sup>

These "real-world" employment programs are beneficial to inmates and society. Offenders who worked for private companies while imprisoned obtained employment more quickly, maintained employment longer, and had far lower recidivism rates than those who worked in traditional correctional industries or were involved in "other-than-work" activities.<sup>78</sup> At the end of the first year post-release, 82 percent of PIECP participants were arrest free.<sup>79</sup> In addition, "PIE participants in South Carolina were particularly proud of their jobs, and of their ability to support their families."<sup>80</sup>

### C. Visitation and Volunteers

A study from MN Department of Corrections found that a single visit correlated with a 25 percent drop in technical violations and a 13 percent drop in new crimes once the inmate got out of prison.<sup>81</sup> Many other studies have confirmed that visitation has powerful positive effects on prison misconduct as well as recidivism.

Despite the breadth of research showing that visits maintaining family ties are among the best ways to reduce recidivism, the reality of having a loved one behind bars is that visits are unnecessarily grueling and frustrating.<sup>82</sup> Most people in state prisons (63%) live more than 100 miles from families.<sup>83</sup>

Many of South Carolina's prisons are located in rural areas of the state, while families of the incarcerated predominantly live in the cities, making visitation difficult. SCDC's visitation policies can be onerous, such as requiring children under the age of ten to provide a copy of their long-form birth certificate, arbitrarily prohibiting visits and requiring all visitors to come at the same time in one day.<sup>84</sup> Prison phone charges are exorbitant, causing great hardship for indigent inmates and their families. Whenever an institution is placed on lock-down, visitation is curtailed indefinitely. All of these factors discourage many from visiting their incarcerated loved ones, even as research

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<sup>77</sup> *Id.*

<sup>78</sup> Moses, Marilyn C. and Cindy J. Smith, Ph.D., "Factories Behind Fences: Do Prison 'Real Work' Programs Work?" U.S. Department of Justice, Office of Justice Programs, National Institute of Justice-NIJ.gov. Google as of 8 Oct. 2018 <https://www.nij.gov/journals/257/pages/real-work-programs.aspx>.

<sup>79</sup> Smith, Paula. "Employment and Vocation Programs in Prison." 2017. Google as of 9 Oct. 2018 <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199948154.001.0001/oxfordhb-9780199948154-e-21>.

<sup>80</sup> See Ragghianti, *supra* note 76.

<sup>81</sup> Minnesota Department of Corrections, The Effects of Prison Visitation on Offender Recidivism, page iii, [www.doc.state.mn.us](http://www.doc.state.mn.us). Google as of 11 Oct. 2018 <https://nicic.gov/effects-prison-visitation-offender-recidivism>.

<sup>82</sup> Rabuy, Bernadette and Daniel Kopf. "Separation by Bars and Miles: Visitation in state prisons." 20 Oct. 2015. Google as of 13 Oct. 2018 <https://www.prisonpolicy.org/reports/prisonvisits.html>.

<sup>83</sup> *Id.*

<sup>84</sup> SCDC Website, "Visitation." As of 15 Oct. 2018 <http://www.doc.sc.gov/family/visitation.html>.

consistently points to the importance of maintaining family ties in achieving successful rehabilitation.

South Carolina has limited taxpayer resources to direct towards corrections. As a result, SCDC is understaffed, and many programs and services for inmates have been dismantled and eliminated over the past 20 years. Many retirees have responded to the dire needs within the state's prisons by trying to fill the gaps through volunteerism. These volunteer efforts are greatly beneficial, but have largely been limited to spiritual activities to date.

SCDC has failed to tap this under-utilized pool of expertise to the benefit of staff and inmates. In the continued absence of sufficient funding and staff, the Department should be recruiting, organizing and training volunteers to implement evidence-based educational and vocational programs that help prepare inmates for leaving prison. Under the bold and creative leadership of Allendale Warden John Pate, such volunteer-based programs have been developed operating as "character-yard." Over the past five years at Allendale Correctional Institution, ACI inmates sign a social contract by which they commit to improving their lives and those of other inmates. The Allendale "character" program has been nationally recognized for its inmate-led activities, including animal husbandry, remedial education, and addiction recovery programs. The difference between Allendale's Level 2 yard and other SCDC facilities is palpable.

#### **D. Parole**

The Robina Institute, based in the University of Minnesota, has conducted the most extensive survey of parole board practices in the U.S., and produced a set of guidelines intended to assist states in improving their parole processes. These guidelines are evidence-based approaches aimed at promoting objectivity. The Robina Institute advises states to have a nonpartisan panel appoint parole board members, and require that each board member possess criminal justice education and expertise sufficient for independent decision-making.<sup>85</sup> There should be a presumption of release at the first eligibility date, as this is the point at which the sentencing judge determined a punishment could be reassessed. After that date, parole board members should not be allowed to deny release on the ground that the prisoner has not served enough time for punishment purposes.<sup>86</sup> Denial of release should be based on credible assessments of a risk of serious criminal conduct, and on readiness for re-entry.<sup>87</sup> Parole board members should be trained in, and use, validated risk assessment tools in their release determinations.<sup>88</sup>

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<sup>85</sup> Rhine, Edward et al. "Improving Parole Release in America." Robina Institute of Criminal Law and Criminal Institute, Jan. 26 2016. Google as of 17 Oct. 2018  
<https://robinainstitute.umn.edu/publications/improving-parole-release-america>.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

Research from the Robina Institute indicates victim statements and testimony are even more influential at parole hearings than at sentencing hearings.<sup>89</sup> They recommend that victim statements should be limited to cover future risk potential and conditions for release.<sup>90</sup> All inmates should be afforded legal representation at parole hearings, and parole supervision should be limited to those inmates assessed to be high risk.<sup>91</sup>

There is general consensus among legislators and policy experts that South Carolina's parole system is broken. While many non-violent offenders are granted parole, those with violent convictions face much steeper obstacles to release. According to South Carolina's Department of Parole, Probation and Pardon (SCDPPP) 2017 report, the Parole Board granted parole to just seventeen percent of violent offenders.<sup>92</sup> Inmates convicted of a violent crime with victims that testify at a parole hearing are extremely unlikely to be released.<sup>93</sup>

According to a recent former Parole Board member, there is an absence of a good-faith, collaborative effort to utilize information SCDC collects on inmates.<sup>94</sup> Most often, SCDC and SCDPPP fail to make arrangements to provide inmate institutional records to the Board, meaning members have no way to discern whether or not inmates used their time behind bars productively through, for example, working at a prison industry job.<sup>95</sup> As a result, Board members glean only self-reported information by inmates through parole agents, along with disciplinary records, criminal history records and detailed descriptions of the crime for which an inmate was serving time. Inmate without an attorney can be given precious little time, in some cases less than a minute or two to make his or her case to the Board. Victims, on the other hand, are given extensive time in front of the Parole Board. Letters written on behalf of inmates provided to the Board are typically not read.<sup>96</sup>

These procedural deficiencies have real impacts on inmates and their families. One particular category of inmates, those serving life sentences, is rarely granted parole. South Carolina's 2010 reforms primarily helped those convicted of non-violent and low-level offenses. According to SCDC data, individuals with life sentences comprise one in 10 prisoners in the state.<sup>97</sup> Within the "lifer" population, 6.5 percent were young when

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> South Carolina Department of Probation, Parole, Probation and Pardon Services. "Report to the Sentencing Reform Oversight Committee," 2017 report. Google as of 18 Oct. 2018 <https://www.dppps.sc.gov/content/download/134769/3070337/file/FY+2017+SROC+Report+%28FINAL%29.pdf>.

<sup>93</sup> *Id.*

<sup>94</sup> Martin, George. 21 Aug. 2018, Personal Interview.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> Nellis, Ashley. "S.C. Legislature must reform life-without-parole sentences." by Ashley Nellis, *The Post and Courier* (Charleston), 20 September 2017. Google as of 18 Oct. 2018 [https://www.postandcourier.com/opinion/commentary/s-c-legislature-must-reform-life-without-parole-sentences/article\\_c9f64da8-9e44-11e7-ac9c-f7ecaf1d057d.html](https://www.postandcourier.com/opinion/commentary/s-c-legislature-must-reform-life-without-parole-sentences/article_c9f64da8-9e44-11e7-ac9c-f7ecaf1d057d.html).



sentenced.<sup>98</sup> According to Dr. Ashley Nellis, researcher for the Sentencing Report, the scientific and legal communities have recognized that “juveniles are less mature intellectually, and thus less culpable for their crimes than adults, but in South Carolina, 139 individuals are nonetheless serving life sentences for crimes committed in their youth.”<sup>99</sup>

South Carolinians spend \$20,000 annually per incarcerated person, meaning the costs for imprisoning an individual serving life approaches a million dollars.<sup>100</sup> Research also demonstrates that even those who commit serious crimes tend to “age out” of crime, becoming far less likely to reoffend as they approach middle age.<sup>101</sup> The National Research Council, the top criminologists in the country, concluded: “long sentences serve little public safety purpose and are instead maintained only to enforce the retributive goals of corrections.”<sup>102</sup> The parole board’s failure to provide a meaningful roadmap for release for inmates with lengthy sentences, along with requiring the usage of objective standards to assess release decisions, carries a heavy price-tag payable by all South Carolinians.

#### **E. Re-entry**

Criminal justice experts largely agree on the premise that plans for inmate re-entry into society should begin on the first day of incarceration. Properly validated risk/needs assessment tools should be administered early into an inmate’s incarceration to provide a roadmap to address individual risks for re-offending, and treatment needs.<sup>103</sup> Medium-to-high risk inmates with traits such as antisocial peer groups, substance abuse, poor educational performance or mental health diagnoses can and should receive programs and services aimed at addressing these factors while incarcerated. Research indicates that programs aimed at the highest-risk inmate population yield the best results in reducing recidivism rates.<sup>104</sup> These programs should be coordinated with the delivery of educational and vocational programs from the outset of the period of incarceration that are so necessary to building an inmate’s skills and increasing his or her chances of success after they become our “neighbors.” Risk/needs assessments, program and service accomplishments should all be shared with the Parole Board to help guide their decision making.

Once again, South Carolina lags behind many other states in re-entry efforts. SCDC Deputy Director of Programs and Re-entry Nena Staley established a successful 30-day re-entry program immediately before release at Columbia-based Manning Correctional Institution, focusing on teaching inmates approaching release about soft

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<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> See PEW, *supra* note 8.

<sup>104</sup> *Id.*

skills, such as resume writing, proper work attire, and interviewing skills.<sup>105</sup> The program at this level facility is a good start, but only assists a small fraction of inmates that are released every year, as it is limited to non-violent offenders. The program is not available to Level 2 and 3 inmates with higher security classifications. These are the inmates most in need of re-entry services prior to their release into society.

The larger critique is that this program is too little, too late. South Carolina simply lacks the staff and capacity to implement large-scale re-entry assistance throughout the correctional system. This is the tragic reality facing SC inmates today; and eventually impacting all South Carolinians, as the societal and financial costs of SCDC's mismanagement take their toll.

## **VI. Conclusion**

### **A. Critical Staffing Shortage**

The essential elements of operating a safe and secure prison system are complex, but not incomprehensible. Research is clear that the dysfunctional correction operations we have identified disrupt prison security and ultimately undermine public safety: dangerous levels of security staffing; an outdated and ineffectual inmate classification system; constitutionally inadequate systems of providing mental health and medical services; meager educational and vocational rehabilitation program; and a subjective, unpredictable parole system that undermines correctional and behavioral modification objectives.

The SC Department of Corrections hasn't always operated this way. During the 1980s, SCDC was considered to be one of the leading correctional systems in the nation. As discussed previously, the programs by which the Department earned its stellar national reputation were intentionally dismantled by Director Michael Moore. By 2003, multiple studies had been undertaken to analyze the impact of dismantling SCDC's human services infrastructure. These studies revealed that rehabilitation programs had become virtually non-existent, correctional staff were untrained, and solitary confinement and use of force were the primary behavioral management tools.

While we have not studied historical SCDC budget requests, it is our understanding that between 2002 and the settlement of the mental health lawsuit in 2016, relatively little new funding for the Department was requested by Governors Sanford and Haley. During that period, SCDC became one of the lowest funded state correctional systems in the country.

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<sup>105</sup> Moore, Thad. "South Carolina wants to help former prisoners find jobs, expand the state's tight job market." *The Post and Courier* (Charleston), 16 July 2017. Google as of 19 Oct. 2018 [https://www.postandcourier.com/business/south-carolina-wants-to-help-former-prisoners-find-jobs-expand/article\\_1320bc74-0350-11e7-967d-3ff6f8be77bf3.html](https://www.postandcourier.com/business/south-carolina-wants-to-help-former-prisoners-find-jobs-expand/article_1320bc74-0350-11e7-967d-3ff6f8be77bf3.html).

Recognizing the need for additional staffing, Director Stirling sought increases in correctional officer salaries, resulting in the legislature approving \$17 million for FY2017 and \$22.3 million for FY2018. We are aware that multiple correctional experts familiar with SCDC, however, believe that even with this additional funding the Department will not be able to increase its security staffing to levels sufficient to safely operate. Rather than continue to manage institutions in ways that expose staff and inmates to greater risk, correctional experts believe the Department, with the support of the General Assembly, should undertake a systematic plan to accelerate the discharge of inmates to align staffing and inmate populations. Dr. James Austin can discuss such a process and can identify models employed in other jurisdictions.

## **B. Leadership**

After being confirmed, Director Stirling stated he wanted to "change the culture" at SCDC. We believe he was sincere and well-intentioned with that pledge. We believe he has tried, and that he is responsible for some important developments. He has failed, however, in bringing fundamental change to the culture of the Department in terms that materially affect the daily lives of staff and most inmates at the Department's institutions.

Director Stirling has done some things particularly well. He committed to settling the mental health lawsuit and providing required services. He sought and retained two strong leaders: Nena Staley to direct programs and re-entry, and Terre Marshall over medical affairs and mental health services. He also obtained additional funding for program staffing, although it falls short of what is needed.

Although research shows programs and services are crucial to overall correctional systems security, SCDC has severely limited the potential for positive impacts from the programs it does have. It is the long-standing cliché in SCDC culture that "security trumps programs and services." In operations, that principle has meant that the implementation of strategic plans for programs and services, even those constitutionally mandated, can become thwarted, if not completely marginalized, due to "security" concerns. This false binary choice is a throwback to a culture when the delivery of programs and services were perceived as coddling inmates rather than effective strategies for operating safe prison yards and for protecting public safety after inmates return to their communities. Modern-day correctional leaders understand the symbiotic relationship between security and rehabilitative goals. Many SCDC career officials do not. When those goals are perceived as competing, as they have been for decades within the SCDC culture and are still, everyone loses – the public, staff, and inmates.

This internal cultural conflict within the Department not only affects the development of programs and policies at executive levels, but has its most pronounced effect in the daily operations of SCDC prisons. The wardens of each institution have enormous influence over the operations, and hence the culture, at their respective facilities. Most SCDC wardens and their program staffs place little importance on the value of programs and services. Moreover, they are not evaluated or held accountable



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for the performance of their staffs in achieving program and service objectives. Until that changes, the institutional cultures over which they preside will be as differentiated as the individual wardens themselves.

We would welcome any questions you may have about these materials. We appreciate your request for our thoughts and would be happy to meet with you to discuss the issues we have identified.

Very truly yours,

A handwritten signature in blue ink, reading "Shirene Hansotia". To the right of the signature, there is a small, stylized blue mark that appears to be "By S.H."

Shirene Hansotia, Esq.  
Staff Attorney,  
Funded by Nelson Mullins Grant  
Turning Leaf

A handwritten signature in blue ink, reading "Stuart M. Andrews, Jr.". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stuart M. Andrews, Jr.  
Partner